IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 49 OF 2007

SHRI. DIGAMBAR V. LOTLIKAR ... Appellant

Versus

SHRI. PRASHANT PAI AND ANR ... Respondents

Ms. A. A. Salkar, Advocate for the Applicant.

Mr. Umesh Rao, Advocate for the Respondent No.1.

Ms. Winnie Coutinho, Public Prosecutor for the State.

Coram:- N. A. BRITTO, J.

Date:- 15th March, 2007

P.C.:-

Heard Ms. A. A. Salkar, the learned Counsel on behalf of the applicant/accused and Mr. Umesh Rao, the learned Counsel on behalf of the respondent no.1/complainant.

The applicant/accused who has been arrested on 1-2-2007 to undergo the sentence imposed under Section 138 of the Negotiable Instruments Act, 1881(Act, for short) has filed the present application for compounding the offence under Section 138 of the Act, for which the learned Counsel Mr. Rao has no objection.

The complainant had prosecuted the accused for bouncing of a cheque in the sum of Rs.4,98,071.78 and the learned J.M.F.C. by Order dated 29-12-2001 had convicted the accused and sentenced him to undergo six months S.I. and to pay a fine of Rs.5000/- and in default to undergo one month S.I. The accused preferred an appeal against the said

conviction/sentence but the same came to be dismissed on 20-5-2003 by the learned Additional Sessions Judge.

A Criminal Revision Application filed by the accused came to be dismissed on 16-7-2004 by this Court and inspite of the dismissal of the said revision application the accused did not surrender to undergo the sentence imposed upon him nor preferred a SLP against the same before the Apex Court.

From the statements made in the application, under consideration, it appears that a sum of Rs.1,25,000/- and another sum of Rs.25,000/- have been paid to the complainant on 26-4-2000 and 21-2-2007, regarding which there is no dispute. As per the accused, the accused has made an arrangement to pay the balance amount of Rs.61,500/- to the complainant but it is not stated as to when the said amount will be finally paid.

The applicant has stated that he got recently married in May, 2006 and that his mother is a widow of 75 years of age and is suffering from high blood pressure and that he too suffers from high blood pressure and is a diabetic patient. It is stated that on account of the arrest to undergo imprisonment, his wife and his mother are not able to maintain themselves as they have no other source of income.

The learned Counsel on behalf of the accused submits that since the complainant has paid the entire amount due on the cheque except for Rs.61,500/- which the applicant is willing to pay even today, the offence may be compounded. The learned Counsel has relied on Usha Badri Poonawalla v. K. Kurien Babu and another((2006(1) Bom.C.R.(Cri.) 33.

There can be no two opinions that the Legislature has introduced Section 147 and made an offence under Section 138 of the Act compoundable but that compounding has to come about when a Court is

seized of the matter either at the stage of trial, appeal or revision. This Court has become functus officio after the dismissal of the revision and therefore an application on behalf of the parties, only because they are willing to compound, cannot be entertained for compounding the offence under Section 482 of the Code. It is well settled that powers under Section 482 of the Code cannot be exercised as to review its own Judgment.

In Venus Steel Products v. Shri Michael Francis Pinheiro(2005 ALL MR(Cri) 2753), this Court has held that once a Judgment has been pronounced by the High Court either in exercise of its appellate or revisional jurisdiction, no review or revision can be entertained against that Judgment as there is no provision in the Code which would enable the High Court to review the same or to exercise revisional jurisdiction. No review is permissible except to the extent indicated in Section 362 of the Code.

At the cost of repetition, it may be stated that compounding, if any, has got to be done while the dispute is under adjudication and not thereafter.

In view of the above, I find there is no merit in this application. Consequently, the same is hereby dismissed.

N. A. BRITTO, J.

RD.